



Sen. Jacqueline Y. Collins

Filed: 4/2/2008

09500SB0862sam001

LRB095 05603 MJR 48666 a

1 AMENDMENT TO SENATE BILL 862

2 AMENDMENT NO. _____. Amend Senate Bill 862 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Consumer Installment Loan Act is amended by
5 changing Sections 1, 2, 15, 15d, and 16 and by adding Sections
6 17.3, 17.5, and 20.2 as follows:

7 (205 ILCS 670/1) (from Ch. 17, par. 5401)

8 Sec. 1. License required to engage in business. No person,
9 partnership, association, limited liability company, or
10 corporation shall make or offer to make ~~engage in the business~~
11 ~~of making~~ loans of money in a principal amount not exceeding
12 \$40,000 ~~\$25,000~~, and charge, contract for, or receive on any
13 such loan a greater rate of interest, discount, or
14 consideration therefor than the lender would be permitted by
15 law to charge if he were not a licensee hereunder, except as
16 authorized by this Act after first obtaining a license from the

1 Director of Financial Institutions (hereinafter called the
2 Director).

3 (Source: P.A. 89-400, eff. 8-20-95; 90-437, eff. 1-1-98.)

4 (205 ILCS 670/2) (from Ch. 17, par. 5402)

5 Sec. 2. Application; fees; positive net worth. Application
6 for such license shall be in writing, and in the form
7 prescribed by the Director. Such applicant at the time of
8 making such application shall pay to the Director the sum of
9 \$300 as an application fee and the additional sum of \$1,000
10 ~~\$450~~ as an annual license fee, for a period terminating on the
11 last day of the current calendar year; provided that if the
12 application is filed after June 30th in any year, such license
13 fee shall be 1/2 of the annual license fee for such year.

14 Before the license is granted, every applicant shall prove
15 in form satisfactory to the Director that the applicant has and
16 will maintain a positive net worth of a minimum of \$30,000.
17 Every applicant and licensee shall maintain a surety bond in
18 the principal sum of \$25,000 issued by a bonding company
19 authorized to do business in this State and which shall be
20 approved by the Director. Such bond shall run to the Director
21 and shall be for the benefit of any consumer who incurs damages
22 as a result of any violation of the Act or rules by a licensee.
23 If the Director finds at any time that a bond is of
24 insufficient size, is insecure, exhausted, or otherwise
25 doubtful, an additional bond in such amount as determined by

1 the Director shall be filed by the licensee within 30 days
2 after written demand therefor by the Director. "Net worth"
3 means total assets minus total liabilities.

4 (Source: P.A. 92-398, eff. 1-1-02; 93-32, eff. 7-1-03.)

5 (205 ILCS 670/15) (from Ch. 17, par. 5415)

6 Sec. 15. Charges permitted.

7 (a) (Blank). ~~Every licensee may lend a principal amount not~~
8 ~~exceeding \$40,000 and may charge, contract for and receive~~
9 ~~thereon interest at the rate agreed upon by the licensee and~~
10 ~~the borrower, subject to the provisions of this Act.~~

11 (b) For purpose of this Act ~~Section~~, the following terms
12 shall have the meanings ascribed herein.

13 "Applicable interest" for a precomputed loan contract
14 means the amount of interest attributable to each monthly
15 installment period. It is computed as if each installment
16 period were one month and any interest charged for extending
17 the first installment period beyond one month is ignored. The
18 applicable interest for any monthly installment period is that
19 portion of the precomputed interest that bears the same ratio
20 to the total precomputed interest as the balances scheduled to
21 be outstanding during that month bear to the sum of all
22 scheduled monthly outstanding balances in the original
23 contract.

24 "Insufficient fund fee" means a fee not to exceed \$25 that
25 may be collected by a licensee from a borrower if the borrower

1 has insufficient funds to pay a check, Automatic Clearing House
2 (ACH) debit, or other form of payment on the day of
3 presentment. Only one fee may be collected by the lender with
4 respect to a particular check, ACH debit, or form of payment
5 even if it has been deposited and returned more than once. A
6 licensee shall present the check, ACH debit, or other form of
7 payment for payment not more than twice. An insufficient fund
8 fee is a licensee's exclusive charge for late payment.

9 "Interest-bearing loan" means a loan in which the debt is
10 expressed as a principal amount plus interest charged on actual
11 unpaid principal balances for the time actually outstanding.

12 "Precomputed loan" means a loan in which the debt is
13 expressed as the sum of the original principal amount plus
14 interest computed actuarially in advance, assuming all
15 payments will be made when scheduled.

16 "Small consumer loan" means a loan with a principal amount
17 of \$10,000 or less.

18 (c) Every licensee may lend a principal amount not
19 exceeding \$40,000.

20 (d) With respect to a loan with a principal amount of more
21 than \$10,000, a licensee may charge no more than, contract for,
22 and receive thereon interest at the rate agreed upon by the
23 licensee and the borrower, subject to the provisions of this
24 Act.

25 (e) With respect to a small consumer loan:

26 (1) A licensee may charge no more than \$.50 per \$100

1 loaned per day of the loan term, inclusive of all finance
2 charges, interest, fees, penalties, including prepayment
3 penalties, or other charges of any sort for any purpose
4 except for an insufficient fund fee and the extra charges
5 as defined in Section 15d of this Act.

6 (2) Small consumer loans must be fully amortized and
7 repayable in substantially equal installments.

8 (3) When a small consumer loan is paid in full one
9 month or more before the final installment due date, a
10 licensee shall refund or credit the obligor with the
11 unearned portion of the finance charge calculated on a
12 straight-line amortization basis.

13 (f) ~~(e)~~ Loans may be interest-bearing or precomputed.

14 (g) ~~(d)~~ To compute time for either interest-bearing or
15 precomputed loans for the calculation of interest and other
16 purposes, a month shall be a calendar month and a day shall be
17 considered 1/30th of a month when calculation is made for a
18 fraction of a month. A month shall be 1/12th of a year. A
19 calendar month is that period from a given date in one month to
20 the same numbered date in the following month, and if there is
21 no same numbered date, to the last day of the following month.
22 When a period of time includes a month and a fraction of a
23 month, the fraction of the month is considered to follow the
24 whole month. In the alternative, for interest-bearing loans,
25 the licensee may charge interest at the rate of 1/365th of the
26 agreed annual rate for each day actually elapsed.

1 (h) ~~(e)~~ With respect to interest-bearing loans:

2 (1) Interest shall be computed on unpaid principal
3 balances outstanding from time to time, for the time
4 outstanding, until fully paid. Each payment shall be
5 applied first to the accumulated interest and the remainder
6 of the payment applied to the unpaid principal balance;
7 provided however, that if the amount of the payment is
8 insufficient to pay the accumulated interest, the unpaid
9 interest continues to accumulate to be paid from the
10 proceeds of subsequent payments and is not added to the
11 principal balance.

12 (2) Interest shall not be payable in advance or
13 compounded. However, if part or all of the consideration
14 for a new loan contract is the unpaid principal balance of
15 a prior loan, then the principal amount payable under the
16 new loan contract may include any unpaid interest which has
17 accrued. The unpaid principal balance of a precomputed loan
18 is the balance due after refund or credit of unearned
19 interest as provided in paragraph (f), clause (3). The
20 resulting loan contract shall be deemed a new and separate
21 loan transaction for all purposes.

22 (3) Loans may be payable as agreed between the parties,
23 including payment at irregular times or in unequal amounts
24 and rates that may vary with an index that is independently
25 verifiable and beyond the control of the licensee.

26 (4) The lender may collect an insufficient fund fee as

1 defined in subsection (b) of this Section. ~~The lender or~~
2 ~~creditor may, if the contract provides, collect a~~
3 ~~delinquency or collection charge on each installment in~~
4 ~~default for a period of not less than 10 days in an amount~~
5 ~~not exceeding 5% of the installment on installments in~~
6 ~~excess of \$200, or \$10 on installments of \$200 or less, but~~
7 ~~only one delinquency and collection charge may be collected~~
8 ~~on any installment regardless of the period during which it~~
9 ~~remains in default.~~

10 (i) (f) With respect to precomputed loans:

11 (1) Loans shall be repayable in substantially equal and
12 consecutive monthly installments of principal and interest
13 combined, except that the first installment period may be
14 longer than one month by not more than 15 days, and the
15 first installment payment amount may be larger than the
16 remaining payments by the amount of interest charged for
17 the extra days; and provided further that monthly
18 installment payment dates may be omitted to accommodate
19 borrowers with seasonal income.

20 (2) Payments may be applied to the combined total of
21 principal and precomputed interest until the loan is fully
22 paid. Payments shall be applied in the order in which they
23 become due, except that any insurance proceeds received as
24 a result of any claim made on any insurance, unless
25 sufficient to prepay the contract in full, may be applied
26 to the unpaid installments of the total of payments in

1 inverse order.

2 (3) When any loan contract is paid in full by cash,
3 renewal or refinancing, or a new loan, one month or more
4 before the final installment due date, a licensee shall
5 refund or credit the obligor with the total of the
6 applicable interest for all fully unexpired installment
7 periods, as originally scheduled or as deferred, which
8 follow the day of prepayment; provided, if the prepayment
9 occurs prior to the first installment due date, the
10 licensee may retain 1/30 of the applicable interest for a
11 first installment period of one month for each day from the
12 date of the loan to the date of prepayment, and shall
13 refund or credit the obligor with the balance of the total
14 interest contracted for. If the maturity of the loan is
15 accelerated for any reason and judgment is entered, the
16 licensee shall credit the borrower with the same refund as
17 if prepayment in full had been made on the date the
18 judgement is entered.

19 (4) The lender may collect an insufficient fund fee as
20 defined in subsection (b) of this Section. ~~The lender or~~
21 ~~creditor may, if the contract provides, collect a~~
22 ~~delinquency or collection charge on each installment in~~
23 ~~default for a period of not less than 10 days in an amount~~
24 ~~not exceeding 5% of the installment on installments in~~
25 ~~excess of \$200, or \$10 on installments of \$200 or less, but~~
26 ~~only one delinquency or collection charge may be collected~~

1 ~~on any installment regardless of the period during which it~~
2 ~~remains in default.~~

3 (5) If the parties agree in writing, either in the loan
4 contract or in a subsequent agreement, to a deferment of
5 wholly unpaid installments, a licensee may grant a
6 deferment and may collect a deferment charge as provided in
7 this Section. A deferment postpones the scheduled due date
8 of the earliest unpaid installment and all subsequent
9 installments as originally scheduled, or as previously
10 deferred, for a period equal to the deferment period. The
11 deferment period is that period during which no installment
12 is scheduled to be paid by reason of the deferment. The
13 deferment charge for a one month period may not exceed the
14 applicable interest for the installment period immediately
15 following the due date of the last undeferred payment. A
16 proportionate charge may be made for deferment for periods
17 of more or less than one month. A deferment charge is
18 earned pro rata during the deferment period and is fully
19 earned on the last day of the deferment period. Should a
20 loan be prepaid in full during a deferment period, the
21 licensee shall credit to the obligor a refund of the
22 unearned deferment charge in addition to any other refund
23 or credit made for prepayment of the loan in full.

24 (6) If two or more installments are delinquent one full
25 month or more on any due date, and if the contract so
26 provides, the licensee may reduce the unpaid balance by the

1 refund credit which would be required for prepayment in
2 full on the due date of the most recent maturing
3 installment in default. Thereafter, and in lieu of any
4 other default or deferment charges, the agreed rate of
5 interest may be charged on the unpaid balance until fully
6 paid.

7 (7) Fifteen days after the final installment as
8 originally scheduled or deferred, the licensee, for any
9 loan contract which has not previously been converted to
10 interest-bearing under paragraph (f), clause (6), may
11 compute and charge interest on any balance remaining
12 unpaid, including unpaid default or deferment charges, at
13 the agreed rate of interest until fully paid. At the time
14 of payment of said final installment, the licensee shall
15 give notice to the obligor stating any amounts unpaid.

16 (Source: P.A. 93-264, eff. 1-1-04.)

17 (205 ILCS 670/15d) (from Ch. 17, par. 5419)

18 Sec. 15d. Extra charges prohibited; exceptions. No amount
19 in addition to the charges authorized by this Act shall be
20 directly or indirectly charged, contracted for, or received,
21 except (1) lawful fees paid to any public officer or agency to
22 record, file or release security; and (2) (i) costs and
23 disbursements actually incurred in connection with a real
24 estate loan, for any title insurance, title examination,
25 abstract of title, survey, or appraisal, or paid to a trustee

1 in connection with a trust deed, and (ii) in connection with a
2 real estate loan those charges authorized by Section 4.1a of
3 the Interest Act, whether called "points" or otherwise, which
4 charges are imposed as a condition for making the loan and are
5 not refundable in the event of prepayment of the loan.; ~~(3)~~
6 ~~costs and disbursements, including reasonable attorney's fees,~~
7 ~~incurred in legal proceedings to collect a loan or to realize~~
8 ~~on a security after default; (4) an amount not exceeding \$25,~~
9 ~~plus any actual expenses incurred in connection with a check or~~
10 ~~draft that is not honored because of insufficient or~~
11 ~~uncollected funds or because no such account exists; and (5) a~~
12 ~~document preparation fee not to exceed \$25 for obtaining and~~
13 ~~reviewing credit reports and preparation of other documents.~~

14 This Section does not prohibit the receipt of a commission,
15 dividend, charge, or other benefit by the licensee or by an
16 employee, affiliate, or associate of the licensee from the
17 insurance permitted by Sections 15a and 15b of this Act or from
18 insurance in lieu of perfecting a security interest provided
19 that the premiums for such insurance do not exceed the fees
20 that otherwise could be contracted for by the licensee under
21 this Section. Obtaining any of the items referred to in clause
22 (i) of item (2) of this Section through the licensee or from
23 any person specified by the licensee shall not be a condition
24 precedent to the granting of the loan.

25 (Source: P.A. 89-400, eff. 8-20-95; 90-437, eff. 1-1-98.)

1 (205 ILCS 670/16) (from Ch. 17, par. 5420)

2 Sec. 16. Disclosure of Terms of Contract. In any loan
3 transaction under this Act, the licensee must disclose the
4 following items to the obligor of the loan before the
5 transaction is consummated:

6 (a) The amount and date of the loan contract;

7 (b) The amount of the loan using the term "amount
8 financed";

9 (c) Any deduction from the amount financed or payment made
10 by the obligor for insurance and the type of insurance for
11 which each deduction or payment was made;

12 (d) Any additional deduction from the loan or payment made
13 by the obligor in connection with obtaining the loan;

14 (e) The date on which the finance charge begins to accrue
15 if different from the date of the transaction;

16 (f) The total amount of the loan charge with a description
17 of each amount included using the term "finance charge";

18 (g) The finance charge expressed as an annual percentage
19 rate using the term "annual percentage rate".

20 "Annual percentage rate" means the nominal annual
21 percentage rate of finance charge determined in accordance with
22 the actuarial method of computation with an accuracy at least
23 to the nearest 1/4 of 1%; or at the option of the licensee by
24 application of the United States rule so that it may be
25 disclosed with an accuracy at least to the nearest 1/4 of 1%;

26 (h) The number, amount and due dates or periods of payments

1 scheduled to repay the loan and the sum of such payments using
2 the term "total of payments";

3 (i) The amount, ~~or method of computing the amount~~ of any
4 ~~default, delinquency or similar~~ charges payable in the event of
5 late payments;

6 (j) The right of the obligor to prepay the loan in full on
7 any installment date and the fact that such prepayment in full
8 will reduce the insurance charge for the loan;

9 (k) A description or identification of the type of any
10 security interest held or to be retained or acquired by the
11 licensee in connection with the loan and a clear identification
12 of the property to which the security interest relates. If
13 after-acquired property will be subject to the security
14 interest, or if other or future indebtedness is or may be
15 secured by any such property, this fact shall be clearly set
16 forth in conjunction with the description or identification of
17 the type of security interest held, retained or acquired;

18 (l) A description of any penalty charge that may be imposed
19 by the licensee for prepayment of the principal of the
20 obligation with an explanation of the method of computation of
21 such penalty and the conditions under which it may be imposed;

22 (m) Identification and description of the method of
23 computing any unearned portion of the finance charge in the
24 event of prepayment of the loan, and if the licensee uses the
25 "Rule of 78THS" method, including a statement explaining such
26 method substantially as follows:

1 shall be printed more conspicuously than other terminology
2 required by this Section.

3 At the time disclosures are made, the licensee shall
4 deliver to the obligor a duplicate of the instrument or
5 statement by which the required disclosures are made and on
6 which the licensee and obligor are identified and their
7 addresses stated. All of the disclosures shall be made clearly,
8 conspicuously and in meaningful sequence and made together on
9 either:

10 (i) the note or other instrument evidencing the
11 obligation. Where a creditor elects to combine disclosures
12 with the contract, security agreement, and evidence of a
13 transaction in a single document, the disclosures required
14 under Section 16 shall be made on the face of the document,
15 on the reverse side, or on both sides, provided that the
16 amount of the finance charge and the annual percentage rate
17 shall appear on the face of the document, and, if the
18 reverse side is used, the printing on both sides of the
19 document shall be equally clear and conspicuous, both sides
20 shall contain the statement, "NOTICE: See other side for
21 important information", and the place for the obligor's
22 signature shall be provided following the full content of
23 the document; or

24 (ii) One side of a separate statement which identifies
25 the transaction.

26 The amount of the finance charge shall be determined as the

1 sum of all charges, payable directly or indirectly by the
2 obligor and imposed directly or indirectly by the licensee as
3 an incident to or as a condition to the extension of credit,
4 whether paid or payable by the obligor, any other person on
5 behalf of the obligor, to the licensee or to a third party,
6 including any of the following types of charges:

7 (1) Interest, time price differential, and any amount
8 payable under a discount or other system of additional
9 charges.

10 (2) Service, transaction, activity, or carrying
11 charge.

12 (3) Loan fee, points, finder's fee, or similar charge.

13 (4) Fee for an appraisal, investigation, or credit
14 report.

15 (5) Charges or premiums for credit life, accident,
16 health, or loss of income insurance, written in connection
17 with any credit transaction unless:

18 (i) the insurance coverage is not required by the
19 licensee and this fact is clearly and conspicuously
20 disclosed in writing to the obligor; and

21 (ii) any obligor desiring such insurance coverage
22 gives specific dated and separately signed affirmative
23 written indication of such desire after receiving
24 written disclosure to him of the cost of such
25 insurance.

26 (6) Charges or premiums for insurance, written in

1 connection with any credit transaction, against loss of or
2 damage to property or against liability arising out of the
3 ownership or use of property unless a clear, conspicuous,
4 and specific statement in writing is furnished by the
5 licensee to the obligor setting forth the cost of the
6 insurance if obtained from or through the licensee and
7 stating that the obligor may choose the person through
8 which the insurance is to be obtained.

9 (7) Premium or other charge for any other guarantee or
10 insurance protecting the licensee against the obligor's
11 default or other credit loss.

12 (8) Any charge imposed by a licensee upon another
13 licensee for purchasing or accepting an obligation of an
14 obligor if the obligor is required to pay any part of that
15 charge in cash, as an addition to the obligation, or as a
16 deduction from the proceeds of the obligation.

17 An insufficient fund fee ~~A late payment, delinquency,~~
18 ~~default, reinstatement or other charge~~ is not a finance charge
19 ~~if imposed for actual unanticipated late payment, delinquency,~~
20 ~~default or other occurrence.~~

21 A licensee who complies with the federal Truth in Lending
22 Act, amendments thereto, and any regulations issued or which
23 may be issued thereunder, shall be deemed to be in compliance
24 with the provisions of this Section, except with respect to the
25 disclosure in paragraph (m), which may be set forth in any
26 manner.

1 (Source: P.A. 90-437, eff. 1-1-98.)

2 (205 ILCS 670/17.3 new)

3 Sec. 17.3. Maximum number of loans. No small consumer loan
4 may be made to a borrower who has an outstanding small consumer
5 loan or outstanding payday loan, as defined by the Payday Loan
6 Reform Act.

7 (205 ILCS 670/17.5 new)

8 Sec. 17.5. Default.

9 (a) No legal proceeding of any kind, including, but not
10 limited to, a lawsuit or arbitration, may be filed or initiated
11 against a consumer to collect on a loan until 28 days after the
12 default date of the loan.

13 (b) Upon and after default, a lender shall not charge the
14 consumer any finance charges, interest, fees, or charges of any
15 kind, other than the insufficient fund fee described in Section
16 15 of this Act.

17 (205 ILCS 670/20.2 new)

18 Sec. 20.2. Prohibited acts. A licensee, unlicensed person,
19 or entity offering or making loans under this Act may not
20 commit, or have committed on behalf of the licensee or
21 unlicensed person or entity, any of the following acts:

22 (1) Threatening to use or using the criminal process in
23 this or any other state to collect on the loan.

1 (2) Using any device or agreement that would have the
2 effect of charging or collecting more fees or charges than
3 allowed by this Act, including, but not limited to, entering
4 into a different type of transaction with the consumer.

5 (3) Engaging in unfair, deceptive, or fraudulent practices
6 in the making or collecting of a loan.

7 (4) Charging any fees or charges other than those
8 specifically authorized by this Act.

9 (5) Threatening to take any action against a consumer that
10 is prohibited by this Act or making any misleading or deceptive
11 statements regarding the loan or any consequences thereof.

12 (6) Making a misrepresentation of a material fact by an
13 applicant for licensure in obtaining or attempting to obtain a
14 license.

15 (7) Including any of the following provisions in loan
16 documents:

17 (A) a confession of judgement clause;

18 (B) a waiver of the right to a jury trial, if
19 applicable, in any action brought by or against a consumer,
20 unless the waiver is included in an arbitration clause
21 allowed under paragraph (C) of this item (7);

22 (C) a mandatory arbitration clause that is oppressive,
23 unfair, unconscionable, or substantially in derogation of
24 the rights of consumers; or

25 (D) a provision in which the consumer agrees not to
26 assert any claim or defense arising out of the contract.

1 (8) Collecting a delinquency or collection charge on any
2 installment regardless of the period in which it remains in
3 default.

4 (9) Collecting treble damages on an amount owing from a
5 loan.

6 (10) Charging for, or attempting to collect, attorney's
7 fees, court costs, or arbitration costs incurred in connection
8 with the collection of a loan.

9 (11) Making a loan in violation of this Act.

10 (12) Garnishing the wages or salaries of a consumer who is
11 a member of the military.

12 (13) Failing to suspend or defer collection activity
13 against a consumer who is a member of the military and who has
14 been deployed to a combat or combat support posting.

15 (14) Contacting the military chain of command of a consumer
16 who is a member of the military in an effort to collect on a
17 payday loan.

18 Section 99. Effective date. This Act takes effect July 1,
19 2008.".